

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 353, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, delete lines 8 through 17, begin a new paragraph and insert:
2 "SECTION 2. IC 6-2.5-7-1 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. **(a) For purposes of**
4 **The definitions in this section apply throughout** this chapter:
5 **(b) "Kerosene"** has the same meaning as the definition contained in
6 IC 16-44-2-2.
7 **(c) "Gasoline"** has the same meaning as the definition contained in
8 IC 6-6-1.1-103.
9 **(d) "Special fuel"** has the same meaning as the definition contained
10 in IC 6-6-2.5-22.
11 **(e) "E85" has the meaning set forth in IC 6-6-1.1-103.**
12 **(f) "Unit"** means the unit of measure, such as a gallon or a liter, by
13 which gasoline or special fuel is sold.
14 **(g) "Metered pump"** means a stationary pump which is capable of
15 metering the amount of gasoline or special fuel dispensed from it and
16 which is capable of simultaneously calculating and displaying the price
17 of the gasoline or special fuel dispensed.
18 **(h) "Indiana gasoline tax"** means the tax imposed under IC 6-6-1.1.
19 **(i) "Indiana special fuel tax"** means the tax imposed under
20 IC 6-6-2.5.
21 **(j) "Federal gasoline tax"** means the excise tax imposed under

1 Section 4081 of the Internal Revenue Code.

2 (k) "Federal special fuel tax" means the excise tax imposed under
3 Section 4041 of the Internal Revenue Code.

4 (l) "Price per unit before the addition of state and federal taxes"
5 means an amount which equals the remainder of:

- 6 (i) the total price per unit; minus
- 7 (ii) the state gross retail, Indiana gasoline or special fuel, and
8 federal gasoline or special fuel taxes which are part of the total
9 price per unit.

10 (m) "Total price per unit" means the price per unit at which gasoline
11 or special fuel is actually sold, including the state gross retail, Indiana
12 gasoline or special fuel, and federal gasoline or special fuel taxes which
13 are part of the sales price.

14 (n) "Distributor" means a person who is the first purchaser of
15 gasoline from a refiner, a terminal operator, or supplier, regardless of
16 the location of the purchase.

17 (o) "Prepayment rate" means a rate per gallon of gasoline, rounded
18 to the nearest one-tenth of one cent (\$0.001), determined by the
19 department by determining the product of:

- 20 (1) the statewide average retail price per gallon of gasoline,
21 excluding the Indiana and federal gasoline taxes and the Indiana
22 gross retail tax; multiplied by
- 23 (2) the state gross retail tax rate; multiplied by
- 24 (3) ninety percent (90%).

25 (p) "Purchase or shipment" means a sale or delivery of gasoline, but
26 does not include:

- 27 (1) an exchange transaction between refiners, terminal operators,
28 or a refiner and terminal operator; or
- 29 (2) a delivery by pipeline, ship, or barge to a refiner or terminal
30 operator.

31 (q) "Qualified distributor" means a distributor who:

- 32 (1) is a licensed distributor under IC 6-6-1.1; and
- 33 (2) holds an unrevoked permit issued under section 7 of this
34 chapter.

35 (r) "Refiner" means a person who manufactures or produces
36 gasoline by any process involving substantially more than the blending
37 of gasoline.

38 (s) "Terminal operator" means a person that:

(1) stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate or intrastate pipelines pending wholesale bulk reshipment; or

(2) stores gasoline at a boat terminal transfer that is a dock or tank, or equipment contiguous to a dock or tank, including equipment used in the unloading of gasoline from a ship or barge and used in transferring the gasoline to a tank pending wholesale bulk reshipment.

SECTION 3. IC 6-2.5-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) Each retail merchant who dispenses gasoline or special fuel from a metered pump shall, in the manner prescribed in IC 6-2.5-6, report to the department the following information:

(1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.

(2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.

(3) That portion of the amount described in subdivision (2) which represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.

(4) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.

(5) The total amount of money received from the sale of special fuel during the period covered by the report.

(6) That portion of the amount described in subdivision (5) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

(7) The total number of gallons of E85 sold from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals five and sixty-six hundredths percent (5.66%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross

retail tax which he has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), IC 6-2.5-6-10, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) ~~an~~ **the amount equal to: determined under STEP THREE of the following formula:**

STEP ONE: Determine:

~~(1)~~ **(A)** the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus

~~(2)~~ **(B)** the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

STEP TWO: Subject to subsection (d), for reporting periods ending before July 1, 2008, determine the product of:

(A) ten cents (\$0.10); multiplied by

(B) the number of gallons of E85 sold at retail by the retail merchant during the period covered by the retail merchant's report.

STEP THREE: Add the amounts determined under STEPS ONE and TWO.

For purposes of this section, a prepayment of the gross retail tax is presumed to occur on the date on which it is invoiced.

(d) The total amount of deductions allowed under subsection (c) STEP TWO may not exceed two million dollars (\$2,000,000) for all retail merchants in all reporting periods. A retail merchant is not required to apply for an allocation of deductions under subsection (c) STEP TWO. If the department determines that the sum of:

(1) the deductions that would otherwise be reported under subsection (c) STEP TWO for a reporting period; plus

(2) the total amount of deductions granted under subsection (c) STEP TWO in all preceding reporting periods;

will exceed two million dollars (\$2,000,000), the department shall publish in the Indiana Register a notice that the deduction program under subsection (c) STEP TWO is terminated after the date specified in the notice and that no additional deductions will be granted for retail transactions occurring after the date specified in the notice."

1 Delete pages 2 through 3.

2 Page 4, delete lines 1 through 16.

3 Page 4, line 21, delete "with a" and insert "**nominally consisting of**
4 **twenty percent (20%)**".

5 Page 4, line 21, delete "content of at least twenty percent" and insert
6 "**and eighty percent (80%) petroleum diesel**".

7 Page 4, delete line 22.

8 Page 4, between lines 22 and 23, begin a new paragraph and insert:

9 "SECTION 4. IC 6-3.1-27-1 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]:
11 Sec. 1. As used in this chapter, "biodiesel" means a renewable,
12 biodegradable, mono alkyl ester combustible liquid fuel derived from
13 agricultural plant oils or animal fats that meets American Society for
14 Testing and Materials specification ~~D6751-02~~ **D6751-03a Standard**
15 **Specification** for Biodiesel Fuel (B100) Blend Stock **for** Distillate
16 Fuels.

17 SECTION 5. IC 6-3.1-27-8, AS AMENDED BY P.L.191-2005,
18 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JANUARY 1, 2006 (RETROACTIVE)]: Sec. 8. (a) Subject to section
20 9.5 of this chapter, a taxpayer that has been certified by the corporation
21 as eligible for a credit under this section and produces biodiesel at a
22 facility located in Indiana is entitled to a credit against the taxpayer's
23 state tax liability equal to the product of:

24 (1) one dollar (\$1); multiplied by

25 (2) the number of gallons of biodiesel:

26 (A) produced at the Indiana facility during the taxable year;
27 and

28 (B) used to produce blended biodiesel.

29 (b) **The corporation shall determine the maximum amount of**
30 **credits that a taxpayer (or, if the person producing the biodiesel is**
31 **a pass through entity, the shareholders, partners, or members of**
32 **the pass through entity) is eligible to receive under this section.**
33 **Subject to subsection (c), the total amount of credits ~~allowed that the~~**
34 **corporation may grant to** a taxpayer (or, if the person producing the
35 biodiesel is a pass through entity, the shareholders, partners, or
36 members of the pass through entity) under this section may not exceed
37 three million dollars (\$3,000,000) for all taxable years.

38 (c) Notwithstanding subsection (b), the **corporation may increase**

1 **the** total amount of credits allowed a taxpayer (or if the person
 2 producing biodiesel is a pass through entity, the shareholders, partners,
 3 or members of the pass through entity) may be increased to an amount
 4 not to exceed a total of five million dollars (\$5,000,000) for all taxable
 5 years with the prior approval of the Indiana economic development
 6 corporation.

7 SECTION 6. IC 6-3.1-27-9, AS AMENDED BY P.L.191-2005,
 8 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JANUARY 1, 2006 (RETROACTIVE)]: Sec. 9. (a) Subject to section
 10 9.5 of this chapter, a taxpayer that has been certified by the corporation
 11 as eligible for a credit under this section and produces blended biodiesel
 12 at a facility located in Indiana is entitled to a credit against the
 13 taxpayer's state tax liability equal to the product of:

14 (1) two cents (\$0.02); multiplied by

15 (2) the number of gallons of blended biodiesel:

16 (A) produced at the Indiana facility; and

17 (B) blended with biodiesel produced at a facility located in
 18 Indiana.

19 **(b) The corporation shall determine the maximum amount of**
 20 **credits that a taxpayer (or, if the person producing the blended**
 21 **biodiesel is a pass through entity, the shareholders, partners, or**
 22 **members of the pass through entity) is eligible to receive under this**
 23 **section.** The total amount of credits ~~allowed that the corporation may~~
 24 **grant to** a taxpayer (or, if the person producing the blended biodiesel
 25 is a pass through entity, the shareholders, partners, or members of the
 26 pass through entity) under this section may not exceed three million
 27 dollars (\$3,000,000) for all taxable years."

28 Page 4, line 25, delete "(a)".

29 Page 4, delete lines 35 through 42.

30 Delete page 5.

31 Page 6, delete lines 1 through 30.

32 Page 6, reset in roman line 42.

33 Page 7, reset in roman lines 1 through 2.

34 Page 7, line 3, reset in roman "(d)".

35 Page 7, line 3, delete "(c)".

36 Page 7, delete lines 5 through 42.

37 Delete pages 8 through 10.

38 Page 11, delete lines 1 through 21.

1 Page 12, line 17, after "used in" insert "**E85**),".

2 Page 12, delete line 18.

3 Page 12, line 19, delete "specifications of 40 CFR 79.55),".

4 Page 13, delete lines 25 through 36, begin a new paragraph and
5 insert:

6 "**(s) "E85" means a fuel blend nominally consisting of eighty-five**
7 **percent (85%) ethanol and fifteen percent (15%) gasoline (as**
8 **described in subsection (g)(2)) that meets American Society for**
9 **Testing and Materials standard specification 5798-99 for fuel**
10 **ethanol for automotive spark-ignition engines (Ed75Ed85).**

11 SECTION 11. IC 6-6-2.5-1 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. As used in this
13 chapter, "alternative fuel" means a liquefied petroleum gas, compressed
14 natural gas product, or a combination of liquefied petroleum gas and a
15 compressed natural gas product, **not including a biodiesel fuel or**
16 **biodiesel blend**, used in an internal combustion engine or motor to
17 propel any form of vehicle, machine, or mechanical contrivance. The
18 term includes all forms of fuel commonly or commercially known or
19 sold as butane, propane, or compressed natural gas.

20 SECTION 12. IC 6-6-2.5-1.5 IS ADDED TO THE INDIANA
21 CODE AS A NEW SECTION TO READ AS FOLLOWS
22 [EFFECTIVE JULY 1, 2006]: Sec. 1.5. (a) As used in this chapter,
23 "biodiesel" means a renewable, biodegradable, mono alkyl ester
24 combustible liquid fuel derived from agricultural plant oils or
25 animal fats that meets American Society for Testing and Materials
26 specifications D6751-03a Standard Specification for Biodiesel Fuel
27 (B100) Blend Stock for Distillate Fuels, as well as other fuels of the
28 same derivation capable of use in the generation of power for the
29 propulsion of a motor vehicle, airplane, or motorboat.

30 (b) As used in this chapter, "blended biodiesel" means a blend
31 of biodiesel with petroleum diesel fuel so that the volume
32 percentage of biodiesel in the blend is at least two percent (2%). A
33 biodiesel blend may be described as "Bxx" where "xx" represents
34 the volume percentage of biodiesel fuel. "B2" is the type of
35 biodiesel blend with the least volume percentage of biodiesel fuel,
36 and "B99" is the type of biodiesel fuel with the most volume
37 percentage of biodiesel fuel. The term does not include biodiesel
38 (B100).

SECTION 13. IC 6-6-2.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. As used in this chapter, "blending" means the mixing of one (1) or more petroleum products, with or without another product, ~~regardless of the original character of the product blended,~~ **excluding biodiesel or blended biodiesel**, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane, or a motorboat. The term does not include that blending that occurs in the process of refining by the original refiner of crude petroleum or the blending of a de minimis amount of products such as carburetor detergent, oxidation inhibitor, lubricating oil, and greases.

SECTION 14. IC 6-6-2.5-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 22. As used in this chapter, "special fuel" means all combustible gases and liquids that are:

- (1) suitable for the generation of power in an internal combustion engine or motor; or
- (2) used exclusively for heating, industrial, or farm purposes other than for the operation of a motor vehicle.

Special fuel includes biodiesel and blended biodiesel (as defined in IC 6-6-2.5-1.5). However, the term does not include gasoline (as defined in IC 6-6-1.1-103), ethanol produced, stored, or sold for the manufacture of or compounding or blending with gasoline, alternative fuels, kerosene, and jet fuel (if the purchaser of the jet fuel has provided to the seller proof of the purchaser's federal jet fuel registration at or before the time of sale).

SECTION 15. IC 34-30-23 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 23. Immunity for Misuse of E85 Motor Fuel

Sec. 1. (a) As used in this chapter, "E85" has the meaning set forth in IC 6-6-1.1-103.

(b) As used in this chapter, "flexible fuel vehicle" means any vehicle that is equipped to operate when fueled entirely by E85.

(c) As used in this chapter, "qualified person or entity" means any person or entity that sells, supplies, distributes, manufactures, or refines E85.

Sec. 2. (a) Except as provided in subsection (b), a qualified person or entity is immune from civil liability for personal injury or

1 **property damage resulting from a person fueling any vehicle with**
 2 **E85 that is not a flexible fuel vehicle.**

3 **(b) This section does not apply:**

4 **(1) to a qualified person or entity that fails to display all**
 5 **E85 warning signs required by federal or state law; or**

6 **(2) if a person's injury or property damage is a direct**
 7 **result of the gross negligence or willful or wanton**
 8 **misconduct of the qualified person or entity.".**

9 Renumber all SECTIONS consecutively.

(Reference is to SB 353 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 11, Nays 0.

Kenley

Chairperson